

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Petition of )  
NEW ACCESS COMMUNICATIONS, LLC )  
JASPER HOLDINGS, LLC, AND )  
NORTH CENTRAL EQUITY, LLC )  
For Authority to Transfer )  
Ownership of New Access )  
Communications, LLC from Jasper )  
Holdings, LLC to North Central )  
Equity, LLC. )  
\_\_\_\_\_ )

DOCKET NO. 05-0004

DECISION AND ORDER NO. 21786

DIV. OF CONSUMER ADVOCACY  
DEPT. OF REVENUE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

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Karen Higashi  
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Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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Docket No. 05-0004  
Decision and Order No. 21786

DECISION AND ORDER

By this Decision and Order, the commission: (1) waives the applicable requirements of Hawaii Revised Statutes ("HRS") § 269-7(a) relating to the transfer of control of NEW ACCESS COMMUNICATIONS, LLC ("NAC") from JASPER HOLDINGS, LLC ("Jasper") to NORTH CENTRAL EQUITY, LLC ("North Central") (collectively, "Petitioners") ("Proposed Transfer of Control"), subject to one condition, noted below.<sup>1</sup>

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<sup>1</sup>Petitioners' Petition for Authority to Transfer Authority, filed on January 5, 2005 ("Petition"). Petitioners also filed a Motion for Protective Order ("Motion") on February 4, 2005, to protect certain documents filed with the commission that are designated confidential by Petitioners. However, in lieu of the commission acting on the Motion, Petitioners filed a Stipulation for Protective Order on April 6, 2005 for the commission's review and approval. The Stipulation for Protective Order will be addressed, pursuant to Hawaii Administrative Rules ("HAR") § 6-61-50, by a separate order to be issued by the commission in this docket.

I.

Introduction

Petitioners served a copy of their Petition on the DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS, DIVISION OF CONSUMER ADVOCACY ("Consumer Advocate"). The Consumer Advocate filed its Statement of Position on February 3, 2005 ("Statement of Position") recommending that the commission waive its regulatory requirement under HRS § 269-7(a). In the alternative, if the commission is not inclined to waive such requirement, the Consumer Advocate does not object to the approval of the Proposed Transfer of Control.

II.

Background

A.

Overview of Subject Entities

NAC is a Minnesota limited liability company with its principal place of business located in Minneapolis, Minnesota. It presently is a public utility that holds a commission-issued certificate of authority ("COA") to provide intrastate telecommunications services within the State of Hawaii ("State" or "Hawaii") as a reseller.<sup>2</sup>

Both Jasper and North Central are also Minnesota limited liability companies with their principal place of business located in Minneapolis, Minnesota. North Central was organized for the

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<sup>2</sup>Decision and Order No. 18711, filed on July 31, 2001, in Docket No. 01-0117.

purpose of purchasing small businesses in low technology, service, distribution or manufacturing industries.

B.

Description of Proposed Transfer of Control

On or about December 16, 2004, North Central and Jasper entered into a Unit Purchase Agreement whereby North Central will acquire one hundred percent (100%) of the membership interests in NAC, subject to certain regulatory approvals. As a result, NAC will become a wholly-owned subsidiary of North Central and will continue to be the regulated telecommunications carrier providing intrastate telecommunications services in the State as a reseller. Petitioners represent that the Proposed Transfer of Control "will be transparent to, and have no adverse impact upon, [NAC's] customers" and that NAC "will continue to operate as it has in the past, using the same name, tariff, and operating authority."<sup>3</sup>

C.

Consumer Advocate's Position

The Consumer Advocate recommends that the commission waive the regulatory requirement under HRS § 269-7(a) because, among other things:

1. North Central will not control a dominant share of Hawaii's telecommunications market through NAC; and
2. The entry of many telecommunications service providers in the Hawaii market may serve to

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<sup>3</sup>Petition at 3.

mitigate any traditional public utility regulatory concerns that may result from the proposed transfer of ownership affecting NAC. Therefore, if there are any adverse consequences from the proposed transaction, consumers in Hawaii will have the option of selecting another service provider.<sup>4</sup>

### III.

#### Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or corporations." Thus, the commission has jurisdiction to review proposed transactions of the parent entity or the affiliates of a regulated public utility under HRS § 269-7(a).

At the outset, we conclude that the Proposed Transfer of Control, described above, should be reviewed under HRS § 269-7(a). Notwithstanding this regulatory requirement, HRS § 269-16.9 permits the commission to waive regulatory requirements applicable to telecommunications providers if we determine that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR

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<sup>4</sup>Statement of Position at 3-4.

chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest.

Upon review of the record in this docket<sup>5</sup>, particularly Petitioners' representations, we find the following: (1) much of the telecommunications services currently provided by NAC are competitive; (2) NAC is a non-dominant carrier in Hawaii; (3) the Proposed Transfer of Control is consistent with the public interest; and (4) competition, in this instance, will serve the same purpose as public interest regulation.

Based on the foregoing, the commission, on its own motion, will waive the requirement of HRS § 269-7(a), in this instance, regarding the Proposed Transfer of Control.<sup>6</sup> Nonetheless, our review of the record indicates that NAC is delinquent in the filing of its annual financial report due on March 31, 2005 ("2004 AFR") in accordance with HAR § 6-80-91. Accordingly, we conclude that our waiver in this Decision and Order should be subject to the condition that NAC files its 2004 AFR within thirty (30) days of the date of this Decision and Order.

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<sup>5</sup>We also take official notice of all records relating to NAC, pursuant to HAR § 6-61-48.

<sup>6</sup>At the same time, the commission will continue to examine a utility's application or petition on a case-by-case basis to determine whether the applicable requirements of HRS § 269-7(a) or any other related provision governing utility transactions, should be waived. The commission's waiver in this decision and order shall not be construed by any utility as a basis for not filing an application or petition involving similar transactions or circumstances.

IV.

Orders

THE COMMISSION ORDERS:

1. The regulatory requirement of HRS § 269-7(a), in this instance, is waived with respect to the Proposed Transfer of Control, described in this docket.

2. The waiver, noted above and granted in this Decision and Order, is subject to the condition that that NAC files its 2004 AFR within thirty (30) days of the date of this Decision and Order.

3. Petitioners shall conform with all of the commission's orders. Failure to adhere to the commission's orders shall constitute cause to void this Decision and Order, and may result in further regulatory actions, as authorized by law.

DONE at Honolulu, Hawaii APR 29 2005.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By Carlito P. Caliboso  
Carlito P. Caliboso, Chairman

By Wayne H. Kimura  
Wayne H. Kimura, Commissioner

APPROVED AS TO FORM:

Kris N. Nakagawa  
Kris N. Nakagawa  
Commission Counsel  
05-0004.ac

By Janet E. Kawelo  
Janet E. Kawelo, Commissioner

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 21786 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DIVISION OF CONSUMER ADVOCACY  
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Karen Higashi

DATED: APR 29 2005